



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: A.B. Dick Company

File: B-233142

Date: January 31, 1989

DIGEST

1. Agency was not required to suspend contract performance under the Competition in Contracting Act when protest was filed more than 10 calendar days after contract award.
2. Procuring agency's communications with offeror concerning required subcontracting plan relate to offeror's responsibility and do not constitute discussions or require that revised proposals be solicited from all offerors.
3. Agency properly clarified clerical error in awardee's price proposal, without opening discussions, where the existence of the mistake and the intended price was apparent from the solicitation and proposal.
4. Awardee's post-award substitution of personnel, in accordance with the solicitation and with agency approval, is a matter of contract administration which the General Accounting Office does not review.
5. Protest against agency determination of price reasonableness is denied where there is no indication of bad faith or fraud and the awardee's price is lower than both the government estimate and the price of the other competitors.
6. General Accounting Office will not appraise adequacy of qualifications of agency contracting personnel absent a showing of possible fraud, conflict of interest or actual bias on their part.

DECISION

A.B. Dick Company protests the award of a contract to Automated Sciences Group, Inc. (ASG), under request for proposals (RFP) No. FMS-88-0019, issued by the Financial Management Service, Department of the Treasury, for

044508/137862

microfiche services. Dick contends that Treasury conducted discussions solely with the awardee, improperly relaxed solicitation requirements relating to personnel, failed to evaluate the reasonableness of ASG's price and that the technical evaluation panel did not have sufficient technical qualifications to perform a proper evaluation. Dick also protests that Treasury failed to suspend ASG's performance as required by the Competition in Contracting Act (CICA).

We deny the protest in part and dismiss it in part.

The RFP contemplated the award of a firm, fixed-price services contract for the conversion of paper case files to microfiche, the updating of case files and duplication, upon request, of master microfiche files. Offerors were informed that award would be made to the responsible offeror whose offer conforming to the solicitation received the highest total point score. The government reserved the right to make award based upon initial proposals without conducting discussions.

Of the six proposals received, four proposals, including those of Dick and ASG, were found by the technical evaluation panel (TEP) to be in the competitive range. The proposals received the following percentage point scores:

<u>Offeror</u>	<u>Technical</u>	<u>Cost</u>	<u>Total</u>
ASG	52	40	92
Dick	60	28	88
Vangard Technologies	54	24	78
TGS Technology, Inc.	52	26	78

The TEP concluded that discussions were not necessary because the proposals were technically acceptable and additional information was not necessary. Because ASG's price was lower than the government's estimate, Treasury requested that ASG verify its price, which ASG did. On September 30, 1988, Treasury awarded a contract to ASG. Dick filed its protest on October 11.

Suspension of Performance

Dick protests that Treasury failed to suspend contract performance as required by CICA. However, under CICA and our Bid Protest Regulations, a contracting agency is only required to suspend contract performance if it is notified of a protest filed with our Office within 10 calendar days

of contract award. 31 U.S.C. § 3553(d)(1) (Supp. IV 1986); 4 C.F.R. § 21.4(b) (1988). The record indicates that Dick's protest was filed with our Office on October 11, 11 calendar days after contract award. Therefore, Treasury was not required to suspend performance.

DISCUSSIONS

Dick protests that Treasury conducted discussions solely with ASG and allowed only ASG to revise its technical and price proposals. Treasury acknowledges that it contacted ASG concerning elements of ASG's small and disadvantaged business subcontracting plan and that it had communications with ASG regarding mathematical errors in ASG's price proposal. Treasury contends that these communications were not discussions as that term is used in negotiated procurements.

An agency may award a contract on the basis of initial proposals without holding discussions if the solicitation advises offerors of that possibility, no discussions in fact are held, and the competition or prior cost experience demonstrates that the acceptance of initial proposals will result in the lowest overall cost to the government. Federal Acquisition Regulation (FAR) § 15.610(a)(3) (FAC 84-16). Once an agency holds discussions with any offeror, it must do so with all offerors in the competitive range. FAR § 15.610(b). However, we have held that information that relates to responsibility or the correction of a clerical error does not constitute improper discussions or require that revised proposals be solicited from all offerors. Sea-Land Service, Inc., B-219665 et al., Dec. 17, 1985, 85-2 CPD ¶ 677.

The requested subcontracting plan is a requirement under the RFP and was requested in accordance with FAR § 19.702(a)(1) (FAC 84-12). This requirement relates to an offeror's responsibility, even where the solicitation requests the offeror to submit the plan with its proposal. Thus, we have found that an agency request for an updated subcontracting plan does not constitute discussions or require that revised proposals be solicited from all offerors. Southeastern Center for Electrical Engineering Education, B-230692, July 6, 1988, 88-2 CPD ¶ 13.

Dick contends that Southeastern is distinguishable from this protest because Southeastern only concerns the late submission of a subcontracting plan and not the correction of defects. Dick argues that Treasury's negotiation and correction of defects in ASG's subcontracting plan constitutes discussions. We do not agree. The crux of our

decision in Southeastern is that the submission or updating of a required subcontracting plan relates to an offeror's responsibility and that communications relating to an offeror's responsibility do not constitute discussions. Id. See also Devcon Systems Corp., B-197935, July 18, 1980, 80-2 CPD ¶ 46, in which we held that the failure of a bidder under an invitation for bids to submit a required small business subcontracting plan related to the bidder's responsibility and not responsiveness.

Dick also contends that Treasury conducted discussions with the awardee by allowing ASG to revise its price proposal. Treasury responds that it properly clarified ASG's clerical price errors.

When a mistake is suspected or alleged before award in a negotiated procurement, the FAR contemplates that the mistake will be resolved through clarification or discussions. See FAR §§ 15.607(a), 15.610(b) (FAC 84-16). The thrust of the regulations is that correction of a mistake, without conducting discussions with all offerors, is appropriate only where the existence of the mistake and the proposal actually intended can be clearly established from the RFP and the proposal. Stacor Corp., B-231095, July 5, 1988, 88-2 CPD ¶ 9. Furthermore, if the resulting communication prejudices the interest of any other offerors, the mistake can only be corrected through discussions. FAR § 15.607(a); ALM, Inc., 65 Comp. Gen. 405 (1986), 86-1 CPD ¶ 240.

We agree with Treasury that the discrepancy in ASG's pricing proposal was a clerical error which could be corrected by clarification. Treasury determined that ASG's extended prices for each line item was not mathematically consistent with the unit prices. Treasury concluded, and ASG verified, that the unit prices were correct but that the extended prices represented multiplication errors. In correcting the extended prices, ASG's offer was reduced by \$569. In this regard, the RFP contained the standard FAR clause which provides that unit prices are presumed to be correct where an offer contains a discrepancy between the unit and extended prices. FAR § 52.215-13 (FAC 84-17).

Furthermore, we fail to see how Dick was prejudiced by Treasury's correction of this clerical error. ASG submitted the lowest price proposal and, on this basis, received the maximum number of points allotted for price. The correction of this clerical error did not change ASG's total evaluation point score or affect the relative standing of the offerors.

Substitution of Personnel

Dick also protests ASG's substitution of personnel after contract award. Dick, which is the incumbent, states that ASG, after award, hired eight Dick employees, including its project manager and that Treasury approved a substitution of these employees for the personnel proposed by ASG. Dick argues that this substitution demonstrates that ASG had no intention of performing the contract with the personnel proposed in its offer.

Treasury states that after award ASG proposed to substitute eight former Dick employees it had hired for staff identified in the proposal. Treasury states that the RFP provided that substitution of personnel may be permitted in the agency's discretion and that the substitution of personnel is a matter of contract administration that is not for consideration by our Office. ASG contends that it was prepared to use the personnel identified in its proposal but that it had also indicated in its proposal that it would consider hiring "qualified candidates from the incumbent's staff" to supplement its operational staff.

We agree with Treasury that the proposed substitutions involve matters of contract administration which this Office does not review and accordingly Dick's protest on this issue is dismissed. 4 C.F.R. § 21.3(m)(1); Mantech Services Corp., B-222462, Aug. 5, 1986, 86-2 CPD ¶ 149. In this regard, we note that the solicitation does not require the contractor to commence performance with the personnel listed in its proposal. Rather, the RFP provides that the contractor obtain the agency's approval for all substitutions and that the personnel actually used during contract performance be as qualified as the personnel listed in the contractor's proposal. Furthermore, we have recognized that it is neither unusual or inherently improper for an awardee to recruit and hire personnel employed by an incumbent contractor. Applications Research Corp., B-230097, May 25, 1988, 88-1 CPD ¶ 499.

We also find no merit to Dick's argument that ASG's substitution of personnel demonstrated a failure of evaluation by Treasury. Dick appears to argue that ASG received an inflated technical score for the personnel proposed in its technical proposal and that ASG then was allowed after award to substitute former Dick employees to perform the contract. The record, however, does not support Dick's assertions. ASG did not receive an inflated evaluation score for its proposed personnel but received the lowest technical score of the four offerors in the competitive range.

Dick also argues that ASG has either improperly substituted Dick's former project manager, for the project manager identified in its proposal or failed to comply with the solicitation requirement that the awardee's project manager provide daily on-site supervision. As noted above, the substitution of personnel after award involves matters of contract administration which this Office does not review. 4 C.F.R. § 21.3(m)(1). Furthermore, Dick's arguments are without merit. The solicitation required the awardee's project manager, or designated representative, to be available on-site between 8 a.m. and 4:30 p.m. each working day. ASG and Treasury state that the project manager identified in ASG's proposal or her designated representative, Dick's former project manager is in attendance on-site each working day between 8 a.m. and 4:30 p.m.

Price Reasonableness

Dick also argues that Treasury failed to evaluate the reasonableness of ASG's low price. The protester contends that ASG's price was not realistic. We find no merit to this argument. We have recognized that a contracting officer's determination of price reasonableness is an exercise of business judgment which we will not disturb unless it is clearly unreasonable or there is a showing of bad faith or fraud. Imperial Schrade Corp., 66 Comp. Gen. 307 (1987), 87-1 CPD ¶ 254. There is no indication of bad faith or fraud and the record supports the reasonableness of the award price given the fact that ASG's price was lower than both the government estimate and the prices of the other competitors. We therefore will not question the agency's determination of the reasonableness of the award price and deny this protest ground.

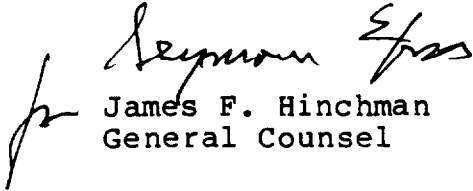
Furthermore, Dick's contention that Treasury was required to perform a cost realism analysis is also without merit. We have held that where, as here, a fixed-price contract is contemplated, a cost realism analysis is not required in the evaluation of proposals since this type of contract provides for a definite price and places upon the contractor the risk and responsibility for contract cost and resulting profit or loss. Sperry Corp., B-225492 et al., Mar. 25, 1987, 87-1 CPD ¶ 341.

Evaluator's Qualifications

Dick's final contention is that the TEP did not have sufficient technical qualifications to properly perform the required evaluation. Our Office will not appraise the

adequacy of the qualifications of agency contracting personnel absent a showing of possible fraud, conflict of interest, or actual bias on their part. PTI Environmental Services, B-230070, May 27, 1988, 88-1 CPD ¶ 504. Because none of these factors is shown or even alleged, we will not consider the objection.

The protest is denied in part and dismissed in part.

James F. Hinchman
General Counsel